

REMARKS

I. Status Summary

Claims 1-19 are pending in the present application. Claims 1-16 have been rejected by the U.S. Patent and Trademark Office (hereinafter the "Patent Office"). The Patent Office has objected to claims 17-19.

Claims 1, 11, 15 and 16 have been amended. Claims 17-19 have been amended to independent form. Support for the amendments can be found throughout the specification as filed. No new matter has been added. Therefore, upon entry of Amendment A, claims 1-19 will be pending in the subject application.

Reconsideration of the application as amended and further in view of the remarks set forth herein below is respectfully requested.

II. Response to Rejection under 35 U.S.C. § 112, first paragraph

Claim 15 has been rejected under 35 U.S.C. § 112, first paragraph, as allegedly being based on a non-enabling disclosure. The Patent Office notes that the specification on pages 11-16 points to a preferred path of practicing the invention, and that the recitation of the process steps, including solvents and specific utilizable carriers will overcome the rejection. See Official Action, page 3.

After careful consideration of the rejection and the Patent Office's comments, applicants respectfully traverse the rejection and offer the following remarks.

Initially, applicants respectfully submit that claim 15 has been amended herein to recite that the process comprises "admixing the compound of Formula (I) according to claim 1 and optionally a pharmaceutically utilizable carrier." Support for the amendment can be found in the specification as filed at page 8, paragraph [0046] as described directly hereinbelow.

Applicants further respectfully submit that the specification at pages 11-16 describes methods of synthesizing specific compounds of Formula (I).

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Claim 15 is directed to a process for formulating compounds of Formula (I). As described in the specification at page 8, paragraph [0046], the process for preparing a medicament (i.e. a formulation) of an active compound comprises admixing the active compound (i.e., a compound of Formula (I)) or a salt thereof with an acceptable carrier. The specification at page 8, paragraph [0046] to page 11, paragraph [0054] describes further factors to be considered in formulating the compounds of the presently disclosed subject matter.

Additionally, applicants note that in the Official Action mailed March 19, 2003, in the subject application's parent application (i.e., U.S. Patent Application Serial No. 10/008,535, now U.S. Patent No. 6,737,440), the Patent Office objected to claim 15, which corresponds to present claim 15, for reciting that the process comprised "formulating," and suggested that the claim be amended to recite "admixing." Subsequent to being amended according to the Patent Office's suggestion, claim 15 of the parent application was allowed.

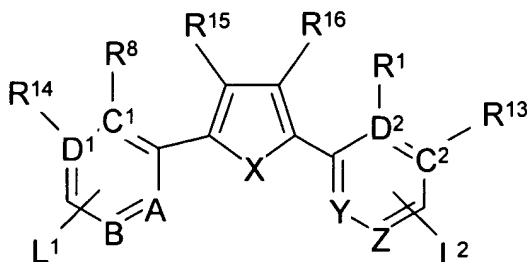
Accordingly, applicants respectfully submit that claim 15 is in condition for allowance and request the withdrawal of the rejection of claim 15 under 35 U.S.C. § 112, first paragraph. Applicants also respectfully request that claim 15 be allowed at this time.

III. Response to the Provisional Obviousness-Type Double Patenting Rejection

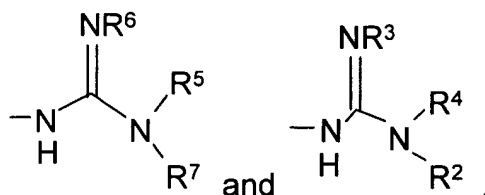
Claims 1-14 and 16 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-11 of co-pending U.S. Patent Application Serial No. 10/721,525 (hereinafter "the '525 application"). In particular, the Patent Office alleges that, while the conflicting claims are not identical, there are close similarities and overlap between the instant compounds, compositions and methods of use and those of the '525 application. The Patent Office concedes that the instant claims differ from the '525 application in the generic description of the

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compounds, but points attention to instances in the generic claims of the '525 application directed to compounds of the formula:



wherein D¹, D², C¹, C², A, B, Y and Z are CH; X is O, S, or NR¹⁷, wherein R¹⁷ is hydrogen or lower alkyl; and L¹ and L² are



See Official Action, page 4.

After careful consideration, applicants respectfully traverse the rejection and offer the following remarks.

Initially, applicants respectfully submit that in an amendment filed in the Patent Office on July 14, 2006, in the '525 application, the claims of the '525 application were amended so that at least one of A, B, Y, and Z must be a heteroatom. For example, claim 1 of the '525 application was amended to recite that "at least one of A, B, Y and Z are selected from N, NR¹⁷, O and S." Thus, applicants respectfully submit that the claims of the '525 application are patentably distinct from claims 1-14 and 16 of the subject application, which are directed to compounds comprising a central five-membered heteroaryl ring bonded to two substituted phenyl moieties.

Accordingly, applicants respectfully request the withdrawal of the provisional double patenting rejection of claims 1-14 and 16 and ask that claims 1-14 and 16 be allowed at this time.

IV. Response to the Objections

The Patent Office has objected to claims 17-19 as being dependent upon rejected base claims. The Patent Office has indicated that claims 17-19 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants gratefully acknowledge the Patent Office's indication that claims 17-19 are allowable if placed in independent form. Applicants respectfully submit that, particularly in light of the comments provided directly hereinabove, claim 16, from which claims 17-19 depend, is believed to be in condition for allowance. However, in an abundance of caution, applicants have amended claims 17-19 to independent form. Therefore, applicants respectfully ask that claims 17-19 be allowed at this time.

V. Additional Amendments

Applicants note that claims 1, 11, and 16 have been amended to recite that "X is S or NR₉, wherein R₉ is H or alkyl." Therefore, claims 1, 11 and 16, and their dependent claims, are not directed to embodiments wherein X is O, the subject matter of the claims of U.S. Patent No. 6,737,440, the patent that issued from the subject application's parent application. Applicants respectfully submit that, as these amendments delete a member from a Markush group in the claims as filed and, in the case of claim 11, correct a typo in the word "alkyl," no new matter has been added. Embodiments wherein X is O were also omitted from claims 17-19, as rewritten in independent form.

Applicants respectfully submit that claims 1-19 are in condition for allowance and respectfully request a notice of allowance indicating the same.

CONCLUSIONS

In light of the above amendments and remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.



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If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

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By:

Arles A. Taylor, Jr.
Registration No. 39,395

AAT/ALO/omb

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Customer No. 25297